IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11774 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARENDRA MOTIBHAI PARMAR

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 11774 of 2002

MR JA ADESHRA for Petitioner No. 1

MR VB SHETH, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/11/2003

ORAL JUDGEMENT

By way of this petition, it is prayed by the petitioner that the respondents be directed to reinstate

the petitioner in service on his original post and by way of interim relief, it is prayed that till this Special Civil Application is decided, the respondent may be directed to pay to the petitioner the last drawn wages. The petitioner herein had raised industrial dispute which was decided by the Labour Court, Kalol, in Reference (LCK) No.246 of 1999. By the impugned award dated 7.1.2000 the Labour Court, Kalol, allowed the said reference partly by ordering reinstatement of the petitioner on his original post without payment of any back wages for the intervening period. The said award was challenged by the Government by way of filing Special Civil Application No.11346 of 2000. The said matter came up for hearing before me and by my order dated 1.10.2001 the said Special Civil Application, which was filed by the State Government, was dismissed at the admission stage. The said order was carried further in appeal, being Letters Patent Appeal No.1081 of 2002. The Division Bench also dismissed the said Letters Patent Appeal on 7th April, 2003. The said fact as such is not in dispute and at that stage, the petitioner has filed this Special Civil Application, with a prayer to direct the respondent to reinstate the petitioner in service as per the order of the labour court.

The learned single Judge (Coram: R.M. Doshit, J.) passed the following order on 10.11.2003 in the present matter:-

"Heard the learned advocates.

It is undisputed fact that the Award made in favour of the petitioner-workman as far back as on 7th January, 2000 has not been implemented. It is also not disputed that the execution and implementation of the said Award has not been stayed by any superior Court. It is also not disputed that the challenge to the said Award has failed before this Court as well as before the Hon'ble Supreme Court.

Nevertheless, the Award has not been implemented as yet. By order dated 27th August, 2003, this Court [i.e. myself] had directed the respondents to pay to the petitioner-workman last wages drawn by him up-to-date. Admittedly, the said direction has also not been complied with.

RULE. Learned AGP Mr. Prachchhak waives service of rule. Pending this petition, the respondents Executive Engineer, Dharoi Canal

Vibhag-I one Shri J.R. Patel and the Deputy Executive Engineer, Sabarmati Right Bank Canal Sub-Division No.1 one Shri B.R. Patel are directed to reinstate the workman in service as early as possible but not later than 17th November, 2003. In the event, the respondents fail to reinstate the petitioner-workman in service on or before 17th November, 2003, both the aforesaid officers shall be personally liable to pay wages to the petitioner-workman; due and payable from 17th November, 2003 till the petitioner workman is actually reinstated in service. S.O. to 18th November, 2003 for further orders.

The registry shall send the writ forthwith."

The matter is now listed on final hearing board by the office and that is how it is placed on board for final hearing by the office.

The learned advocate Mr J.A. Adeshra has placed on record a copy of the order passed by the Supreme Court by which the Supreme Court has rejected the Special Leave Petition, preferred by the State Government. The said order is kept on record. In view of this, the order of the Labour Court is now confirmed and realising this aspect after getting the instruction from the concerned officer Mr K.H. Patel, the learned A.G.P. Mr Sheth pointed out that the petitioner has already been reinstated on his original post on 17th November, 2003. In view of the aforesaid statement, so far as the order of reinstatement is concerned, nothing further is required to be done as the petitioner has already been reinstated in service.

Mr Adeshra further states that the petitioner is required to be paid the regular wages from the date of the award. The petitioner is entitled to the regular wages from the date of the award till the date of reinstatement. In view of the fact that the award of the Labour Court is confirmed up to Supreme Court, the concerned employee is entitled to regular wages from the date of the award of the Labour Court till he was reinstated in service. Since the Labour Court has not granted any back-wages to the petitioner for intervening period, naturally no such benefit can be given to the petitioner, however, the petitioner is entitled to get regular wages from the date of award till the date of reinstatement. In view of the aforesaid aspect of the

matter, the State Government is directed to calculate the amount to which the petitioner is eligible from the date of the award till the date of reinstatement, i.e. 16th November, 2003, within two weeks from today and pay the same to the petitioner within one month thereafter.

It is not in dispute that the petitioner was not paid any amount under Section 17-B of the I.D. Act and therefore there is no question of adjustment of such amount. At this stage, the learned AGP Mr Sheth states that for the last three months, the petitioner is being paid the regular wages by the Department. If that be so, naturally, the said amount is required to be deducted at the time of calculating the amount payable to the petitioner, and the remaining amount be paid, as indicated in this order.

The petition is partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

(P.B. Majmudar, J.)
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